IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2006

STATE OF TENNESSEE v. DANIEL DECKER

Appeal from the Criminal Court for Hamilton County
No. 239147 Rebecca J. Stern, Judge

No. E2005-01241-CCA-R3-CD - Filed June 9, 2006

The appellant, Daniel Decker, was indicted by the Hamilton County Grand Jury for the first degree murder of his grandmother. The appellant was convicted by a petit jury and sentenced to life without the possibility of parole. After the denial of a motion for new trial, the appellant filed an untimely notice of appeal. This Court granted the appellant's motion to waive the untimely filing of the notice of appeal. On appeal, the appellant challenges the introduction of photographs of the victim's injuries and videotape of the crime scene as well as the sufficiency of the evidence. For the following reasons, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed

JERRY L. SMITH, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JAMES CURWOOD WITT. JR., JJ., joined.

David R. Barrow, Chattanooga, Tennessee, for the appellant, Daniel Decker.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; William H. Cox, III, District Attorney General; and Barry Steelman, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

On August 9, 2001, Sergeant David Woosley of the Chattanooga Police Department was dispatched to 4113 Sunbury Avenue in response to a 911 call from the appellant. During the call, the appellant indicated that there had been a forced entry and assault. The appellant shared the home at 4113 Sunbury with his grandmother, Judith Decker.

When Sergeant Woosley and other officers arrived at the scene, the appellant was on the front porch of the home with a telephone, wearing only boxer shorts. The appellant informed the officers

that the suspect was gone. During the initial sweep of the home, the officers found the body of Judith Decker, the victim, in her bed. According to Sergeant Woosley, it was obvious that the victim was deceased.

As the officers continued to sweep the home, they found that one of the door windows in the kitchen area was broken. The door was standing open and was pushed up against the kitchen counter. There was glass on the counter. The appellant claimed that the intruder had entered the house through the garage. There were no signs of forced entry to the door or the lock. Additionally, other than the bloody scene in the victim's bedroom, the remainder of the house was intact and very well kept.

Officer Elicia Jenkins also responded to the initial dispatch. Upon her arrival, she noticed the appellant screaming and yelling in the living room. Once the appellant quieted down, he asked Officer Jenkins how his grandmother died, whether she was shot and where he was going to live. The appellant told the officers that he did not know what happened to his grandmother because he had not been in her bedroom. The officers did not allow the appellant to put on a shirt or robe because he had scratches on his face, arms and neck and what appeared to be brain matter on his chest.

Sergeant Craig Johnson of the Crime Scene Unit documented the appellant's injuries. The appellant suffered superficial wounds to his arms and neck area and had blood around his nose and on his hands.

During the search of the home, the officers discovered that the washing machine was full and had been stopped mid-cycle. Inside the washing machine, the officers discovered trousers, undershorts, a wash rag, a couple of towels and a couple of pillowcases.

The appellant was subsequently taken to the police station for questioning after the police noticed his suspicious behavior and some inconsistencies at the crime scene. Once at the police station, the appellant was advised of his Miranda rights. The appellant waived his Miranda rights and gave a lengthy statement.

In his statement, the appellant informed the police that he called 911 in order to "cover up what happened, make it look like I didn't do it." According to the appellant's initial story, he and his grandmother got into an argument during which his grandmother slapped him several times. At some point during the argument, the appellant claimed that he picked up a knife and starting cutting himself, even threatening to commit suicide if his grandmother kept telling him he was irresponsible. At some point during the argument, the appellant picked up a broom and busted out the window.

The appellant then told police that he and his grandmother started fighting on the floor. He was able to push her off of him and grab the fire poker from the fireplace. Then, according to the

appellant, he hit his grandmother with the poker, which drew blood.[1] Then the appellant stated that the victim went to her bedroom to read. The appellant initially claimed that he followed her to her bedroom then changed his story to say that the victim sent him to his room for a time before she called him into her bedroom.[2] At some point, the appellant took off his watch and ring because he "didn't want to get blood on them." The appellant claimed that his grandmother "started cussing" at him and would not stop so he "kept hitting her with it [the fire poker] and then the handle broke and I picked it up and kept hitting her and then I . . . then I noticed that she was not moving and that's when I turned the lights out and called the cops." The appellant told the police that he hit the victim "probably fifteen" times in the head area with the fire poker.

According to the appellant, after he realized that the victim was dead, he wiped off the fire poker, washed the blood out of a rag he used to clean it up and stuck it in the washing machine along with his clothing. The appellant also admitted that he tried to clean up some of the blood that was on the carpet.

At trial in February of 2005, Dr. Frank King, the Hamilton County Medical Examiner, testified that the cause of the victim's death was sever blunt head trauma as the result of a homicide. According to Dr. King, the impacts of the blows were forceful enough to split the skin of the face and scalp and to break many of the bones in the face and skull in addition to directly injuring the brain inside the skull. The injuries were consistent with the victim being struck repeatedly with the amount of force comparable to swinging a baseball bat. Dr. King was unable to determine the exact number of blows that the victim received because the victim's skull was crushed and caved in completely. The injuries were located primarily in the center of the face and forehead and slightly to the right side of the face and forehead. In addition, there were several blunt trauma impacts to the mouth area.

Dr. King opined that the victim's injuries were consistent with there being no movement of the victim's head during the time in which the blows were inflicted. According to Dr. King if the victim was moving her head or body around while an object was being swung at her, there would be more complicated patterns of injury, and it would be expected that the victim would have impact injuries on different parts of her head or upper torso. In this case, the fact that all of the blows were concentrated to one area of the victim's face and head indicates that there was little or no movement of the victim or the victim's head during the attack. Dr. King further opined that the victim was likely to be asleep or not conscious of the attack because there was blood spattering only on the top

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[1]The appellant later claimed that he "swung at her [with the fire poker] in the living room but it did not draw blood" and that "it was in the bed that it drew blood."

[2]The appellant changed his story again. In the next version of the story the appellant claimed that he swung at the victim with the poker but did not hit her. Then the victim ran to the bedroom and got into bed. The appellant stated that he followed her into the bedroom and hit her twice with the poker. Then the appellant claimed that the victim told him to go to bed. Sometime later, the victim called the appellant back to her bedroom. On his way in, the appellant grabbed the poker. The two started arguing again. According to the appellant, the victim sat up in bed and began hitting him. The appellant then hit her repeatedly with the poker.

of the comforter and the victim's exposed left arm. Additionally, the victim had no defensive wounds to her forearms.

Mary Beth Catanzaro testified that in June of 2001, she was a juvenile court referee responsible for listening to juvenile cases and making determinations as to appropriate treatment and rehabilitation. Referee Catanzaro identified a tape-recording of a hearing in which she informed the appellant that he would be committed to state custody if he did not cooperate in his home. The appellant indicated that he understood if he did not behave at home he was going to be incarcerated until he was nineteen years old.

Mark Wells, a case manager for Hamilton County Juvenile Court, testified that he was appointed as a case manager for the appellant in 2001 due to some behavioral problems. Mr. Wells met with the appellant and the victim several times. At some point, the victim, the appellant and Mr. Wells prepared a behavior contract for the appellant in order to address some of the problems the appellant was having regarding his behavior and his unruliness towards the victim. At the time of the victim's death, Mr. Wells was monitoring the appellant several times a week.

Mr. Wells witnessed the appellant's "arrogant and antagonistic" behavior toward his grandmother on July 25, 2001, when he was at the victim's home for a birthday dinner. According to Mr. Wells, the victim and the appellant got into an argument about money that the appellant had inherited from his grandfather. The victim told the appellant that he would get the money if she felt that he was "responsible."

The appellant took the stand in his own defense. He testified that in June of 2001, he was living with the victim at 4113 Sunbury Drive. The appellant admitted that he was having a lot of problems with being disrespectful and entered into a written agreement that summer regarding his behavior with his grandmother and social worker.

According to the appellant, on August 9, 2001, he woke up about 10:30 a.m. and went to his neighbor's house. He was not feeling well, so he called his grandmother at work. The victim told the appellant to have their neighbor, Mr. Martin, drive him to the hospital where she worked. The appellant did not want to go to the hospital. When the victim arrived home from work, she had been unhappy with the appellant for not completing any of his chores after being home all day. The appellant stated that he got a knife and cut himself on the arm, but put the knife away after the victim slapped him in the face. The appellant then stated that he was angry and broke a window. According to the appellant, the victim hit him and followed him into the living room. While he was walking into the living room, the appellant tripped and fell to the floor. The appellant testified that the victim got on top of him and began hitting him. The appellant put his foot into the victim's stomach and pushed her off of him. The appellant then claimed that the victim got back on top of him and hit him in the nose, causing it to bleed.

The appellant then admitted that he grabbed the fire poker and hit the victim twice before chasing her to the bedroom. The appellant stated that he took off his watch and ring because he did

not want to get blood on them. The victim told the appellant to go to his room. On his way to his room, the appellant took off his clothing and placed it in the washing machine. The appellant then claimed that the victim called him back to her room where the victim threatened to call Mark Wells to report the appellant's behavior. The appellant unplugged the phone to prevent the victim from making any telephone calls.

The appellant stated that he knelt down, and the victim grabbed him by his hair and slapped him. Then, the victim claimed that "voices inside of [his] head" told him to "get rid of this, just do what you have to do." At that point, the appellant stated that he:

> [W]ent out into the hallway where I put the fire poker because I put it out there when I was on my way to the bedroom not intending to use it again. I went back in there without any thought or any reason. I didn't know why I went back in there and it just happened so fast. I took the fire poker and I swung it up like this and I just hit her and she was crouched down in the bed, I guess she was planning on going to sleep after I went back out in the hallway and I just kept hitting her in the same spot. I didn't move hardly at all and I just kept hitting her and hitting her. I don't know how many times I hit her really. I said fifteen in the statement but that was just a guess. I don't know how many times I actually hit her.
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> I realized that she wasn't saying anything and I finally stopped. I turned the light on and I saw what I saw lying there with her head beat in and not moving anywhere. I said to myself, what have I done. What I did was, I got real scared, really scared and I tried to clean everything up and even a couple of times I tried to see if I could - - even though I wasn't really thinking, I knew I couldn't do nothing but I tried to see if I could do anything with her head and move it a certain way and see if she was still living but I didn't touch it because I was scared to. I wanted to do something because I didn't know what to do. I was scared to death.
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> After that I went and cleaned off the fire poker. I threw the purse on the porch and I put the fire poker back on the stand. I cleaned the carpet over where I put the fire poker. I called the police and that's what happened.

The appellant also admitted that he lied to the 911 operator by making up the intruder story.

The defense also called Dr. Michael Schmits, a child psychologist at Cumberland Hall who observed and tested the appellant during his month-long forensic evaluation. Dr. Schmits testified that the appellant was deemed competent to stand trial but had "significant clinical symptoms of psychiatric disturbance." Dr. Schmits concluded after testing that the appellant suffered from psychotic disorder and conduct disorder. According to Dr. Schmits, part of the diagnosis for the psychotic disorder was based on the appellant's claims that he was "hearing voices" and "seeing apparitions" or "demons."

Dr. Pamela Auble, a psychologist, also evaluated the appellant prior to trial. Dr. Auble performed a "neuropsychological evaluation" of the appellant. In conjunction with the evaluation, Dr. Auble spent approximately twelve hours with the appellant. Dr. Auble opined that the appellant suffered from psychotic disorder not otherwise specified, chronic post-traumatic stress disorder, attention deficit hyperactivity disorder, cognitive disorder not otherwise specified, and oppositional defiant disorder.

At the conclusion of the proof, the jury found the appellant guilty of first degree murder. In a bifurcated sentencing hearing, the jury heard testimony regarding aggravating and mitigating factors. After hearing the testimony, the jury sentenced the appellant to life in prison without the possibility of parole.

The appellant filed a timely motion for new trial in which he challenged the introduction of the photographs and videotape of the victim as well as the sufficiency of the evidence. The trial court denied the motion for new trial. The appellant subsequently filed an untimely notice of appeal. This Court waived the untimely filing of the notice of appeal. On appeal, the appellant again challenges the introduction of the photographs and video-tape of the victim as well as the sufficiency of the evidence.

Analysis

Introduction of Photographs and Videotape

Initially, the appellant contends that the trial court erred in admitting into evidence the photographs and videotape taken of the crime scene that also show the victim's body. Specifically, the appellant argues that the photographs and videotape were unduly prejudicial and irrelevant to the jury's determination as to premeditation. The State takes the opposite position, arguing that the photographs and videotape were "needed to prove premeditation."

As we begin our analysis, we note well-established precedent providing "that trial courts have broad discretion in determining the admissibility of evidence, and their rulings will not be reversed absent an abuse of that discretion." State v. McLeod, 937 S.W.2d 867, 871 (Tenn. 1996). Moreover, the Tennessee Rules of Evidence embody, and our courts traditionally have acknowledged, "a policy of liberality in the admission of evidence in both civil and criminal cases." State v. Banks, 564 S.W.2d 947, 949 (Tenn. 1978); State v. Robinson, 930 S.W.2d 78, 84 (Tenn. Crim. App. 1995). To be admissible, evidence must satisfy the threshold determination of relevancy mandated by Tennessee Rule of Evidence 401. See, e.g., Banks, 564 S.W.2d at 949. Rule 401 defines "relevant evidence" as being "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. However, relevant "evidence may be excluded if its probative value is substantially outweighed by . . . the danger of unfair prejudice." Tenn. R. Evid. 403; see also Banks, 564 S.W.2d at 951.

Graphic, gruesome, or even horrifying photographs of crime victims may be admitted into evidence if they are relevant to some issues at trial and their prejudicial effect is outweighed by their probity. Banks, 564 S.W.2d at 949-51. On the other hand, "if they are not relevant to prove some part of the prosecution's case, they may not be admitted solely to inflame the jury and prejudice them against the defendant." Id. at 951 (citing Milam v. Commonwealth, 275 S.W.2d 921 (Ky. 1955)). The decision as to whether such photographs should be admitted is entrusted to the trial court, and that decision will not be reversed on appeal absent a showing of abuse of discretion. Id. at 949; State v. Dickerson, 885 S.W.2d 90, 92 (Tenn. Crim. App. 1993).

The term "undue prejudice" has been defined as "[a]n undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Banks, 564 S.W.2d at 950-51. In Banks, the Supreme Court gave the trial courts guidance for determining the admissibility of relevant photographic evidence and determined that a trial court should consider: (1) the accuracy and clarity of the picture and its value as evidence; (2) whether the picture depicts the body as it was found; (3) the adequacy of testimonial evidence in relating the facts to the jury; and (4) the need for the evidence to establish a prima facie case of guilt or to rebut the defendant's contentions. Id.

In the case herein, the trial judge conducted a jury-out hearing prior to the admission of the contested photographs and videotape. The State argued that the video was necessary to demonstrate to the jury that the victim was lying in her bed at the time that she was attacked because the appellant made various statements that there was either mutual combat or that self-defense was an issue. The State further argued that the videotape was relevant to show that there was no struggle, that there was no mutual combat, and that it was relevant to show that the appellant had intended to kill the victim and that there was premeditation. Counsel for the appellant did not "have any objection to the videotape except when it is zeroing in on her shapeless head, shapeless skull." The trial court viewed the videotape in its entirety and ruled that because the State was required to prove premeditation, it was going to allow portions of the tape to be used. However, the trial court ordered the State to redact the portions of the videotape that were extreme close-ups of the victims injuries because they exceeded what was necessary in order to show premeditation. The trial court further determined that if the State was going to use the videotape that the court was not going to allow a lot of photographs to be introduced into evidence. Thus, upon reviewing the photographs and videotape, the trial court weighed the prejudicial effect of the introduction of the photographs and videotape with the probative value and made a determination that the photographs and videotape were admissible.

The record contains photographs of the victim lying on the bed as well as photographs of the bedroom which graphically demonstrate the location and nature of the victim's wounds and the amount of blood spatter in the room. The photographs were used at trial during testimony of the police officer who was the first on the scene, the medical examiner who performed the autopsies, and the testimony of the crime scene officer who took the videotape and photographs. The police officer testified as to the nature of the scene upon his arrival, including the location of the body and the nature of the wounds that the victim sustained. See State v. Stephenson, 878 S.W.2d 530, 542

(Tenn.1994) (stating that trial court did not abuse its discretion when it admitted a photograph of a corpse to illustrate the testimony of a police detective). The Dr. King, the medical examiner, utilized the photographs to illustrate the location and nature of the wounds sustained by the victim. The crime scene photographer's testimony was introduced to show the condition of the bedroom and the remainder of the house. Their testimony was introduced to rebut the appellant's theory of self-defense and mutual combat.

We determine that the pictures were certainly relevant to counter the appellant's contention that he killed the victim after a fight and struggle. The pictures indicate a violent attack where the likely sleeping or unconscious victim was hit repeatedly in the head with a fire poker. They show the extent and number of the wounds as well as the location of the victim's body, including the fact that there was no blood under the comforter. We have viewed the photographs and conclude that while they were certainly unpleasant, the probative value of the photographs was not substantially outweighed by danger of unfair prejudice. Under these circumstances we cannot say the trial judge abused her discretion in admitting these pictures. This issue does not merit reversal.

This Court further concludes that while the videotape and photographs admitted in this case may have contained some of the same material, it was not error to admit the videotape. See Bigbee, 885 S.W.2d 797, 807 (Tenn. 1994), superceded by statute as stated in State v. Odom, 137 S.W.2d 572, 580-81 (Tenn. 2004) (holding that it was not error to admit a videotape of the crime scene although it depicted images similar to those of photographs also admitted). Each of the different forms of evidence admitted in this case served different purposes and were probative of the issues to be decided by the jury. As a result, the trial court did not abuse its discretion in admitting the videotape into evidence. See id.; see also State v. Kelvin Anthony Lee, No. 02C01-9603-CC-00085, 1997 WL 686258, at *9 (Tenn. Crim. App., at Jackson, Nov. 5, 1997), perm. app. denied, (Tenn. Aug. 3, 1998). The probative value of the video of the crime scene is not outweighed by its prejudicial effect. This issue is without merit.

Sufficiency of the Evidence

Lastly, the appellant argues that the evidence was insufficient to support the jury's verdict of first degree murder. Specifically, the appellant argues that there was "no evidence or preparation" or premeditation. The State contends that "the evidence presented at trial overwhelmingly supports the [appellant's] conviction beyond a reasonable doubt."

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and "approved by the trial judge, accredits the testimony of the" State's witnesses and resolves all conflicts in the testimony in favor of the state. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption "and replaces it with one of guilt." State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the

burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. Id. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Harris, 839 S .W.2d at 75. In making this decision, we are to accord the State "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." See Tuggle, 639 S.W.2d at 914. As such, this Court is precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own "inferences for those drawn by the trier of fact from circumstantial evidence." Matthews, 805 S.W.2d at 779. Further, it is well-settled that all questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact, not an appellate court. See State v. Morris, 24 S.W.3d 788, 795 (Tenn. 2000).

Tennessee Code Annotated section 39-13-202(a)(1) defines first degree murder in pertinent part as "a premeditated and intentional killing of another." Tennessee Code Annotated section 39-13-202(d) provides:

> As used in subdivision (a)(1) "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Tenn. Code Ann.§ 39-13-202(d). Therefore, in order to convict the appellant of his indicted offense, the State was required to prove beyond a reasonable doubt that the defendant killed the victim with "premeditation." "[W]hether premeditation is present is a question of fact for the jury, and it may be inferred from the circumstances surrounding the" commission of the crime. State v. Billy Gene Debow, Sr., No. M1999-02678-CCA-R3-CD, 2000 WL 1137465, at *4 (Tenn. Crim. App., at Nashville, Aug. 2, 2000); see also State v. Davidson, 121 S.W.3d 600, 614 (Tenn. 2003); State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997); State v. Anderson, 835 S.W.2d 600, 605 (Tenn. Crim. App. 1992). Some relevant factors that tend to support the existence of premeditation include: "the use of a deadly weapon upon an unarmed victim; the particular cruelty of the killing; declarations by the defendant of an intent to kill; evidence of procurement of a weapon; preparations before the killing for concealment of the crime, calmness immediately after the killing," and evidence that the victim was retreating or attempting to escape when killed. Davidson, 121 S.W.3d at 614; Bland, 958 S.W.2d at 660; see also State v. West, 844 S.W.2d 144, 148 (Tenn. 1992). "[T]he fact that repeated blows (or shots) were inflicted on the victim is not sufficient, by itself, to establish first-degree murder." State v. Brown, 836 S.W.2d 530, 542 (Tenn. 1992).

Looking at the evidence in a light most favorable to the State, the evidence at trial showed that the appellant killed his grandmother by bludgeoning her to death in the head with a fire poker

while she slept. After the killing, the appellant fabricated a story about an intruder and attempted to clean up the crime scene before calling 911 to report the crime. He removed his bloody clothes and put them in the washing machine to soak the blood out of the clothes. Additionally, the appellant cleaned the blood off of the floor and washed himself off in an attempt to remove the blood from his body. After the police arrived on the scene and began their investigation, suspicions arose as to the nature of the appellant's involvement in his grandmother's death. According to the police officers, the appellant was relatively calm during the search of the home and processing of the crime scene. Upon questioning, the appellant admitted that he killed the victim but claimed that he killed her as a result of a heated argument. The photographs and videotape of the crime scene do not paint a picture of a struggle; the victim was found in her bed with the covers over the majority of her body. The portion of her body located under the covers did not have any blood on it. Further, the medical examiner testified that the victim's injuries were consistent with the victim having no participation in the attack and possibly being asleep at the time of her death. Again, questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact, not an appellate court. Morris, 24 S.W.3d at 795. The jury heard the evidence, including the testimony of the appellant, and determined that there was sufficient evidence of premeditation. Upon the evidence in the record, we determine that a rational jury could have found that the appellant was guilty of premeditated first degree murder as there was ample evidence to support the existence of premeditation. This issue is without merit.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

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JERRY L. SMITH, JUDGE